IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.2518/Bang/2019: Asst.Year 2009-2010
ITA No.2519/Bang/2019: Asst.Year 2010-2011
ITA No.2520/Bang/2019: Asst.Year 2011-2012
ITA No.2521/Bang/2019: Asst.Year 2012-2013
ITA No.2522/Bang/2019: Asst.Year 2014-2015
ITA No.2523/Bang/2019: Asst.Year 2015-2016

The Asst.Commissioner of Income-tax, Circle 6(3)(1) Bangalore.	v.	M/s.Abhilash Software Development Centre, No.2/10, 3rd Floor, Prasad Group 80 Feet Road, Pujari Layout RMV 2nd Stage Bangalore – 560 094. **PAN : AAIFM8040N.**
(Appellant)		(Respondent)

Appellant by : Sri.Muzaffar Hussain, CIT-DR
Respondent by : Sri.Balram R.Rao, Advocate

Date of Hearing : 12.08.2021		**Date of Pronouncement : 17.08.2021**

O R D E R

Per George George K, JM

These six appeals at the instance of the Revenue are directed against the consolidated order of the CIT(A) dated 30.09.2019. The relevant assessment years are 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2014-2015 and 2015-2016.

2. Common issue is raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

3. Identical grounds are raised in these appeals. The ground raised in Asst.Year 2009-2010 reads as follow:-

> *"1. The order of the CIT(Appeals) is opposed to law and the facts and circumstances of the case.*
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> *2. On the facts and circumstances of the case, whether the Ld.CIT(A) has erred in interpreting the interim order dated 16.03.2017 wherein the Hon'ble Karnataka High Court ruled that the assessee shall be entitled to tax exemption in accordance with law which is distinct from mandating for a compulsory tax exemption to be extended to the assessee?*
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> *3. On the facts and circumstances of the case, whether the Ld.CIT(A) has erred in interpreting the interim order dated 16.03.2017 wherein the Hon'ble Karnataka High Court has not delved into the conditions necessary to treat the 16 ODCs of M/s.TCS as separate units and thereby the conditions laid down in Para 4 of the CBDT notification dated 01.03.2018 continue to remains in dispute?*
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> *4. On the facts and circumstances of the case, whether the Ld.CIT(A) has erred in accepting the 16 ODCs of M/s.TCS as separate units when the lease deed for all the 16 concerned properties in the Industrial park had been entered into by M/s TCS only?*
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> *5. On the facts and circumstances of the case, whether the Ld.CIT(A) has erred in accepting the 16 ODCs of M/s.TCS as independent taxable units despite it not adhering to the conditions of the Industrial Scheme 2002 which mandates that a State or Central tax law must treat them as independent tax units and till date the 16 ODCs have not been recognized as such by any State or Central law.*
>
> *6. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.*
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> *7. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal."*

4. We shall narrate the facts and adjudicate the case pertaining to assessment year 2009-2010 and disposal of the

same will apply *mutatis mutandis* to the other assessment years, as well.

5. Brief facts of the case are as follow:

The assessee is a partnership firm engaged in the business of developing, operating and maintaining Industrial park in Whitefield, Bangalore. The assessee-firm obtained approval from Industrial Park Scheme 2002, which has been notified by Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, Government of India, vide SO No.354(E) dated 01.04.2002. The approval was given by the Ministry to the assessee on 13.04.2006 under non-automatic route. The criteria of approval under the automatic and non-automatic route is given in para 6 and 7 of the Scheme of 2002. The DIPP granted approval to the assessee for three units vide its letter dated 13.04.2006. The assessee had applied to CBDT for notification under Income-tax Rules for grant of deduction u/s 80IA(4)(iii) of the I.T.Act. Report was called from the Assessing Officer after causing necessary enquiry. The A.O. submitted his report dated 21.07.2011, which is reproduced at page 3 and 4 of the assessment order for assessment year 2009-2010, wherein it is observed that the assessee had violated the condition (4) of the approval granted on 13.04.2006 insofar as it has breached clause 6(f) of the Scheme 2002, namely, *"No single unit referred to in column (2) of the table given in the sub-paragraph (b) of paragraph 6 shall occupy more than fifty per cent of the allocable industrial area of an industrial model town or industrial park or Growth Centre."* The assessee was asked to show cause as to why the benefit u/s 80IA of the I.T.Act

should not be withdrawn on account of deviations noticed. The assessee submitted that TCS (the tenant) had 16 units comprising of overseas developing centre, which is distinctly separate and identifiable and qualified to be separate units as per the above referred Industrial park Scheme 2002. It was submitted by the assessee that as per the DIPP approval, it has to lease atleast three units whereas the assessee has housed 18 separate and distinct identifiable units, hence it had complied with the terms and conditions of the Industrial Park Scheme 2002. The assessee also relied on the judgment of the Hon'ble Karnataka High Court in the case of Primal Projects (P.) Limited v. DCIT reported in 123 Taxman.com 314 (Kar.). The Assessing Officer, however, observed that as per the non-automatic approval route, the assessee firm was bound to seek the notification from the Empowered Committee constituted by the Central Government and the assessee could not get the due notification, which was essential as per the Industrial Park Scheme 2002 in respect of non-automatic approval even though the assessee started operating and maintaining industrial park since assessment year 2006-2007. It was further stated by the A.O. that 16 units mentioned by the assessee were not independent and distinct. The A.O. concluded the assessment by denying the benefit of section 80IA of the I.T.Act by observing that Industrial Park in question has not been notified by the CBDT for grant of deduction as specified in Rule 18C of the I.T.Rules. Accordingly, the claim of deduction u/s 80IA(4)(iii) of the I.T.Act was denied.

6. In the interim, based on certain clarifications issued by the CBDT letter dated 14.03.2012, the DIPP issued a show cause notice to the assessee dated 27.04.2012, proposing to withdraw the approval granted to it under the Industrial Park Scheme 2002, since it had contravened the conditions specified in such approval. After considering the assessee's submission, the DIPP vide order dated 08.03.2013, withdrew the approval granted to the assessee. The assessee had filed Writ Petition (WP No.13172/2013) before the Hon'ble Karnataka High Court against the withdrawal of the approval. The Hon'ble Karnataka High Court vide its judgment dated 18th November, 2015 held that the assessee was entitled to tax benefit under clause (iii) sub-section (4) to section 80IA of the I.T.Act since there is no violation of any of the conditions mentioned in the non-automatic route under IPS 2002. Accordingly, the Hon'ble Court restored the approval granted vide order of DIPP dated 13.04.2006. The order of the Single Bench was affirmed by the Division Bench in Writ Petition No.3298/2016 (judgment dated 07.08.2019).

7. In the meanwhile, when the appeal was pending before the first appellate authority by the Revenue, the assessee brought to the notice of the CIT(A), the conclusions drawn by the Hon'ble High Court, as regards restoration of approval granted to the assessee. The CIT(A) decided the issue in favour of the assessee and direct the A.O. to grant the benefit of section 80IA(4)(iii) of the I.T.Act. The relevant finding of the CIT(A) at para 6 and 7, reads as follow:-

> *"6. I have carefully considered the facts of the case, the grounds of appeal and the statement of facts the written*

submissions filed, remand report received from the AO and the appellant's rejoinder thereto.

6.1 The appellant has for all the six assessment years under appeal claimed deduction u/s 80-IA(4)(iii) which is reproduced below:

80-IA. Deductions in respect of profits and gains from industrial undertaking enterprises engaged in infrastructure 'development, etc. - (I) Where the gross income of an assessee includes any profits and gains derived from any business industrial undertaking 'or an enterprise referred to in sub-section:(4) (such business hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to hundred per cent of profits .and gains derived from such business for the first five assessment years commencing at any time during the periods as specified in sub-section (2) and thereafter: twenty-five per cent of the profits and gains for further five assessment years:

Provided that where the assessee is a company, the provisions of this sub-section shall have effect as if for the words "twenty-five per cent" the words "thirty per cent" had been substituted.
……

(4) This section applies to-

(i) …
(ii) …

(iii) any undertaking which develops, develops and operates or maintains and operates an industrial park notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002:

Provided that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 and transfers the operation and maintenance of such industrial park to another undertaking (hereafter in this section referred to as the transferee undertaking) the deduction under sub-section (1), shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years in a manner as if the operation and maintenance were not so transferred to the transferee undertaking;

The manner of granting deduction vi] s 80-IA(4)(iii) is prescribed in Rule 18C of the Income Tax Rules, 1962,

reproduced below:

Eligibility of Industrial Parks for benefits under section 80-IA(4)(iii).

18C. (1) The undertaking shall begin to develop, develop and operate or maintain and operate an industrial park any time during the period beginning on the 1st day of April, 2006, and ending 011 the 31 st day of March, [2011I).

(2) The undertaking and the Industrial Park shall be notified by the Central Government under the Industrial Park Scheme, 2008.

(3) The undertaking shall continue to fulfill the conditions envisaged in the Industrial Park Scheme, 2008.]

The above rule had been substituted. w.e.f. 08/01/2008. Prior to amendment the Rule18C read as under:

18C. Eligibility of Industrial Parks and Special Economic Zone for benefits under section 80-IA(4) (iii)

(1) The undertaking .shall begin to operate-an industrial park during, the. period beginning on the 1st day of April, 1997, and ending on the 31 st day of March, 2002

(1A) The undertaking shall begin to develop or develop and operate or maintain and operate a special economic Zone any time during the period beginning on the 1 st day of April, 2001 and ending on 31 st day of March 2006.

(2) The undertaking shall be duly approved by the Ministry of Commerce and Industry in the Central Government under the scheme for industrial park or Special Economic Zones notified by that Ministry.

(3) The undertaking shall continue to fulfil the conditions envisaged in the scheme.

(4) On approval under sub-rule (2), the Central Board of Direct Taxes, shall notify industrial parks for benefits under section 80-IA.

From a reading of the above Rule with the provisions of .the Act, it is clear the following approval from the DIPP, the notification has to be issued by CBDT in order for an assessee to be able to claim the tax benefit u/s 80-IA(4)(iii). Hence the appellant's claim that because it had fulfilled all the conditions laid down by the DIPP while granting approval, the notification by CBDT is not an essential requirement is not in accordance with the above provisions.

6.2 During the appellate proceedings, reliance was placed on the order of the Hon'ble Karnataka High Court, Single Judge Bench in Writ Petition no.13172/2013 (GM-RES) dated 18/ 11/2015 quashing the withdrawal of approval by DIPP. The relevant portion of the order 18 reproduced below:

"6. It is evident from the above that there is no such condition imposed as is the case in respect of applications filed under the Automatic Approval Route. In that, the specific condition under 6(f) is that no allocable area exceeding 50% of the Industrial Park shall be occupied by a single unit. The allegation against the petitioner in the impugned order is that the petitioner had allocated an area comprising more than 90% of the area in favour of the entity, namely, Tata Consultancy Services (TCS). The petitioner would point out that not only did no such condition was imposed in so far as the petitioner's park was concerned, that even if such a condition 'was to be made applicable. TCS was in turn not operating all the 16 entities, which may be under its umbrella. The 16 units were being independently run as distinct and independent units and this was sought to be emphasized in several different ways apart from producing certificates issued by Joint Director, District Industries Centre, to certify that petitioner had 18 separate independent and identifiable units located in the park. As well as a certificate from the Department of Information Technology, Biotechnology and Science and Technology, Government of Karnataka, who also endorsed the same. In addition, the Department of Industries and Commerce, Government of Karnataka had also certified the same. The said certificates are produced at Annexures 'P', `Q', and 'R', respectively, to the petition. I~ is this primary aspect and the limited ground on which the present petition is filed questioning the action of the respondent in withdrawing the approval.

7. On the above allegation that there has been violation of the terms of allotment by the petitioner and it is this stand of the respondents, which is sought to be reiterated in the statement of objections, which Sri Dixit would highlight and emphasize to reiterate that there has indeed been a violation as admittedly, the petitioner in its application. had undertaken not to allocate more 'than 50% of the area to anyone unit and further, had also filed an affidavit to undertake that there would not be any such allotment. In the, face of which it is not tenable for the petitioner now to retract from the sworn statement in this regard. And it is also not demonstrated that 16 units said to be under the umbrella of TCS are independent taxable unit as would be the requirement under the Scheme to bring a unit under the definition of 'independent unit' and since the petitioner admittedly cannot retract the statements made in the application or undertaking in the affidavit, the petition itself is misconceived and ought to be rejected

outright. Apart from the above, other contentions are taken in the statement of objections to demonstrate that the petitioner is not in a position to deny that the so called independent units under the umbrella of TCS are indeed a single entity and not independent taxable units as sought to be claimed.

8. In the above background, the question .whether there has been a violation of any of the conditions imposed by the Empowered Committee, which has addressed the application of the petitioner and accorded the approval is examined with reference to the provisions of the Scheme. It is evident that the conditions, which are to be met as a precondition for the Automatic Approval Route are not applicable in so far as the Non-Automatic Approval Route is concerned. This is evident from a plain reading of the relevant provisions, namely, paragraphs 6 and 7. They are independent and the tenor of the provisions also indicate that the manner in which approval is granted is not the same. In that, the Empowered Committee examines the application on a case to case basis and considers the same on merits and thereafter, imposes conditions, There is no condition forthcoming, in the approval granted in favour of the petitioner, relating to restriction of allocation of any extent of industrial area to anyone particular unit. Even if the TCS and its several units in the park is considered as a single unit, the prohibition contained in so far as the allocation applicable in respect of the Automatic Approval Route cannot be made applicable to the Non-Automatic Approval Route, It is also to be kept in view that if the object of the Scheme was to encourage and ensure that prosperous industries are set up, the move on the part of the respondents is counterproductive and it would result in killing a successful industrial park. Therefore, on merits, it cannot be said that the respondents were justified in withdrawing the approval and in the interest of the country, it would not be advisable to kill a prosperous industry. Therefore, the action of the respondents was ill-advised and not sustainable.

The writ petition is, accordingly, allowed. The impugned order stands quashed."

6.3 Subsequently, however, the DIPP had preferred Writ' Appeal no.3298 of 2016 against the above order of the Single-Judge Bench of .the Hon'ble Karnataka High Court. During the appeal proceedings, the appellant's counsel informed the Hon'ble Court that CBDT notification had not been obtained by the DIPP despite the above order quashing the withdrawal of the approval. The two interim orders of the Hon'ble Karnataka High Court dated 16/03/2017 and 12/07/201'7 are reproduced below:

Hon'ble Justice Chief Justice and Budihal R.B.

16/03/2017
Order in WA 3298/2016
Order on I.A.No.1 of 2016

Mr.D.L.N.Rao, learned senior advocate appear with his junior, Srimathi S.R.Anuradha, learned advocate and accepts notice for the sole respondent.

After hearing the learned advocates appearing for the parties and considering the averments contained in the affidavit annexed to the application for condonation of delay, we are satisfied that the appellants were prevented by sufficient cause from presenting the memorandum of writ appeal in time. Therefore, the delay in filing the writ appeal is condoned

The application for condonation of delay stands allowed.

We made no order as to costs.

Order in the writ appeal

By consent, the writ appeal is taken up for preliminary hearing.

The appeal will be heard.

Issue notice.

As the respondent has, already, entered appearance through its learned advocate formal service Of notice to the respondent is dispensed with.

The respondent shall be entitled to tax; exemption.

However, such exemption shall, abide by the result of the writ appeal.

Honble Justice CHIEF JUSTICE AND P.S.DINESH KUMAR 12/07/2017

Order in WA 329812016

We have passed an interim order on March 16, 2017, holding, inter alia, that the respondent - writ petitioner shall be entitled to tax exemption subject to the result of the writ appeal.

Mr.D.I.N.Rao, learned senior advocate, appears and submits that the tax exemption for the relevant years has not been issued.

Mr. Prabhuling Navadagi, learned Additional Solicitor General, seeks for time. He assures the court that the needful shall be done.

Post this appeal on July 19, 2017.

6.4 Pursuant to the directions of the Court, the DIPP revoked the order for withdrawal of approval and the CBDT issued notification dated 01/03/2018, which is reproduced below:-

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 1st March, 2018

S.O. 910(E)—Whereas the Central Government in exercise of the powers conferred by clause (iii) of subsection (4) of section 80-IA of the **Income-tax Act, 1961**(43 of 1961)(hereinafter referred to as the "Act"), has framed and notified a scheme for industrial park, by the notifications of the Government of India *vide* number S.O. 354(E), dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s Abhilash Software Development Centre having its registered office at 10, 3rd Floor, 80ft Road, R.M.V. 2nd Stage, Bengaluru- 560094 has developed an industrial park located at Plot No. 96 & 104 P2, E.P.I.P. Area, Whitefield, Bengaluru- 560066.

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15(1)/2003-IP &ID dated 08.08.2003.

And whereas the Central Government has also subsequently approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/61/2005-IP&ID dated 13.04.2006.

And whereas the Central Government cancelled the above approval granted vide Ministry of Commerce and Industry letter No. 15/61/2005-IP&ID-II dated 08.03.2013.

And whereas the Hon'ble High Court of Karnataka by its order dated 18.11.2015 in writ petition no. 13172 of 2013 quashed the above cancellation order dated 08.03.2013.

And whereas DIPP, Department of Industrial Policy and Promotion, has filed a Writ Appeal no. 3298 of 2016 against the order of Hon'ble High Court of Karnataka in writ petition no. 13172 of 2013.

And whereas the Empowered Committee has revoked the order for withdrawal of approval dated 08.03.2013 in compliance to the directions of Hon'ble High Court of Karnataka subject to the outcome of Writ appeal no. 3298 of 2016 filed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80IA of the said Act and in pursuance of directions of Hon'ble High Court of Karnataka in the order dated 18.11.2015 in writ petition no. 13172 of 2013 and subject to the outcome of Writ appeal no. 3298 of 2016 filed by the Department of Industrial Policy and Promotion, Ministry of Commerce and

Industry in the Hon'ble High Court of Karnataka, the Central Government, hereby, notifies the undertaking, being developed and being maintained and operated by M/s Abhilash Software Development Centre, Bengaluru, as an industrial park for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure of the notification.

[Notification No. 13/2018, F.No.178/15/2011-ITA-I]

ROHIT GARG, Director

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Abhilash Software Development Centre, Bengaluru.

1. (i) Name of the Industrial Undertaking : M/s Abhilash Software Development Centre.

(ii) Proposed location : Plot No. 96 & 104 P2, E.P.I.P. Industrial Area, Whitefield, Bengaluru- 560066.

(iii) Proposed Area of Industrial Park : 17,000 Sq. Mtrs.

(iv) Proposed activities : Software supply services.

(v) Percentage of allocable area earmarked for Industrial use : 90.00%

(vi) Percentage of allocable area earmarked for commercial use : 10.00%

(vii) Minimum number of industrial units : 3 Units

(viii) Total investments proposed (Amount in Rupees) : Rs.29,50,00,000

(ix) Investment on built up space for Industrial use (Amount in Rupees) : Rs.9,55,95,000

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : Rs.29,50,00,000

(xi) Proposed date of commencement of the Industrial Park : 31-10-2005

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more State or Central tax laws. Compliance to this condition is subject to the outcome of Writ appeal 3298 of 2016 filed by the Department of Industrial Policy

and Promotion, Ministry of Commerce and Industry in the Hon'ble High Court of Karnataka.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this notification, are located in the Industrial Park.

7. M/s Abhilash Software Development Centre, Bengaluru, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the Industrial Park did not commence by 31.03.2006, fresh approval will be required under the Industrial Park Scheme, 2008, subject to the applicability under that Scheme for availing benefits under sub-section 4(iii) of Section 80-IA of the Income-tax Act, 1961.

9. The approval will be invalid and M/s Abhilash Software Development Centre, Bengaluru, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s Abhilash Software Development Centre, Bengaluru, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-110001 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s Abhilash Software Development Centre, Bengaluru, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

6.5 During the appellate proceedings the AR placed reliance on the direction of the Hon'ble Karnataka High Court dated 16/03/2017 supra wherein it was stated that the appellant was eligible for tax exemption. However, it was pointed out to the AR that para 4 of the above notification dated 01/03/2018 expressly states that compliance of the condition that no single unit would occupy more than 50% of the

allocable industrial area was subject to the outcome of the Writ Appeal no.3298 of 2016 and hence the relief sought in appeal would also be contingent on the outcome of the Writ Appeal.

6.6 The appellant's AR sought time for submitting details of the outcome of the Writ Appeal. Subsequently, the Hon'ble Karnataka High Court has delivered its verdict in Writ Appeal no.3298 of 2016 on 07/08/2019. The relevant portion of the said judgment is reproduced below:

"We have examined the case of the appellant and we have gone through the sanction made under the "Automatic Route" and Non-Automatic Route" of IPS 2002. It is found form the "Non-Automatic Route" which allowed 90% for industrial purpose and! 0% for commercial use. When such is the condition and the compliance by the respondent, we do not find any infirmity in the order passed by the learned single Judge. The petitioner has not placed any justifiable ground for withdrawal of the scheme allotted under "Non-Automatic Route".

"It is submitted, the respondent/petitioner is entitled to tax benefit under the "Non-Automatic Route", then liberty is reserved to the respondent to made necessary application for the tax benefit. In such an event, the same shall be considered by the appellant. This court vide order date 161h Mar 2017, has recorded that the respondent shall be entitled to tax exemption, the same shall be extended to the respondent, in accordance with law."

"Under these circumstances, the appeal is to be dismissed. Accordingly, the appeal is dismissed. The order passed by the learned single judge is confirmed.

6.7 With the above mentioned decision, the condition laid down in para 4 of the notification dated 01/03/2018 is no longer in dispute. The Hon'ble Karnaataka High Court vide its interim order dated 16/03/2017 had already ruled that the appellant was entitled to tax exemption subject to the outcome of the Writ Appeal. Since the Writ Appeal has been decided in favour of the appellant, there are no grounds to further deny the appellant the deduction u/s 80-lA. Respectfully following the directions of the Hon'ble Karnataka High Court, the grounds of appeal raised in the 'present appeals are allowed for all the assessment years in question.

7. In the result, the assessee's appeals are allowed."

8. The Revenue being aggrieved, has filed these appeals before the Tribunal. The learned Departmental Representative submitted that the Hon'ble High Court has directed that the assessee would be entitled to tax exemption only in accordance with law and the CIT(A) without examining whether the assessee is operating more than three independent units, had allowed the appeals of the assessee.

9. The learned AR has filed a brief synopsis narrating the chronology of events and the judgment of the Hon'ble Karnataka High Court in Writ Petition No.13172/2013 and the Division Bench judgment confirming the same. The learned AR reiterated the submissions made before the Income Tax Authorities.

10. We have heard rival submissions and perused the material on record. The Hon'ble High Court has restored the approval dated 13.04.2016 in para 6 of the judgment in Writ Petition No.13172/2013 (judgment dated 18.11.2015). The Hon'ble High Court had held no condition imposed in the non-automatic route has been violated. It was held by the Hon'ble High Court that the conditions enumerated in section 6(f) of IPS 2002 is only applicable to automatic route. The Hon'ble High Court further held that the assessee has established 16 independent and distinct units allocated to TCS and this is evident from the documentary evidence that are placed on record, such as certificate issued by the Joint Director, District Industrial Centre, Certificate from the Department of Information Technology, Biotechnology and Science and Technology, Government of Karnataka,etc. The

judgment of the single Bench of the Hon'ble jurisdictional High Court was confirmed by the Division Bench of the Hon'ble High Court in Writ Petition No. 3298/2016. Since the Hon'ble High Court has categorically held that there is no violation of the condition imposed and has restored the approval dated 13.04.2016 and has further found that the assessee is having independent and distinct 16 units, i.e., let out to TCS, we hold that the CIT(A) is justified in directing the A.O. to grant deduction u/s 80IA(4)(iii) of the I.T.Act. Hence, we uphold the order of the CIT(A) as correct and in accordance with law.

11. In the result, the appeals filed by the Revenue stand dismissed.

Order pronounced on this 17th day of August, 2021.

Sd/-	**Sd/-**
(B.R.Baskaran)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 17th August, 2021.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-6, Bengaluru
4. The Pr.CIT-6,Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore